

GAHC010134572025



2025:GAU-AS:13212

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/228/2025

MD. MAJIBUR RAHMAN
S/O LATE JOBBAR ALI, R/O VILL- KAMARPARA, P.O.- GHANSILOMI, P.S.-
KHARUPETIA, DIST- DARRANG, ASSAM

VERSUS

MD. JULHAS ALI
S/O LATE JOBBAR ALI, R/O VILL- KAMARPARA, P.O.- GHANSILOMI, P.S.-
KHARUPETIA, DIST- DARRANG, ASSAM

Advocate for the Petitioner : MR A ALI, MS K TAYE,MS. M KHATUN

Advocate for the Respondent : K RAHMAN, MR. SAIDUL ALOM

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

22-09-2025

Heard Mr. A. Ali, learned counsel for the petitioner and Mr. K. Rahman, learned counsel for the respondent.

2. This is an application under Article 227 of the Constitution of India, read with Section 151 of the CPC praying for setting aside the order dated 10.06.2025, arising out of orders dated 22.04.2025 and 24.01.2025 in T.S. No. 162/2013, pending in the Court of learned Civil Judge (Jr. Div. No.1) Darrang, Mangaldoi, whereby, the petitioner/defendant No.2 was not given any opportunity to examine his witnesses for proper adjudication of the suit.

3. It is submitted by Mr. Ali, learned counsel for the petitioner that the respondent as a plaintiff had instituted a suit, being T.S. No. 162/2013 in the Court of learned Civil Judge (Jr. Div. No.1) Darrang, Mangaldoi against the present petitioner, who appeared as defendant No.2, praying for decree of Khas possession and permanent injunction over the suit premises.

4. The summons were accordingly issued and the present petitioner/defendant No.2 and other defendant appeared, submitted their written statement, claiming that they are the original owner of the suit land and suppressing the actual fact, the respondent as plaintiff had filed the case with some false and fabricated story.

5. During the stage of evidence, the petitioner was under treatment for his head injury, as he was attacked by the plaintiff along with some other persons, for which he sustained grievous head injuries. An FIR was also lodged by his

wife, which is accordingly registered as Kharupetia P.S. Case No.131/2024 under Sections 189(2)/191(2)/191(3)/115(2)/118(2) of the BNS, 2023.

6. At the stage of evidence, his wife submitted an application on 24.01.2025 praying for adjournment of the case on medical grounds and to fix the case on another date for evidence of the official witnesses. But, the said petition was dismissed on 24.01.2025 by the learned Civil Judge (Jr. Div. No.1) arbitrarily without considering all the aspects of the case including the medical grounds of the petitioner/respondent.

7. Being aggrieved and dissatisfied with the said order of rejection, the mother of the petitioner, i.e., defendant No.1 filed a review petition, being Review Pet. No. 649/2022 under Section 114 CPC, wherein, the a prayer was made for consideration of their prayer for adducing official witness as defence witness. But the said review petition was also dismissed vide order dated 22.04.2025 only on the ground that the petitioner could not annex the medical documents.

8. Thereafter, the petitioner submitted another application being Pet. No.1399/2025 on 06.06.2025 by annexing all medical documents praying for an opportunity to adduce evidence. But the said application was also dismissed by passing the impugned order dated 10.06.2025, fixing the same for judgment on 05.07.2025. Thus, the petitioners are deprived from adducing any defence witness in support of their claim.

9. It is further submitted by Mr. Ali, learned counsel that the production of the DW is very much essential for the proper adjudication of the matter and if they are not provided with a chance to adduce the evidence, prejudice will be caused to the present petitioner/defendant. Accordingly, it is submitted by Ali,

learned counsel that the impugned orders dated 10.06.2025 arising out of orders dated 22.04.2025 and 24.01.2025 in T.S. No. 162/2013 may be set aside and the petitioner/defendant may be given one opportunity to examine his defence witness.

10. Mr. Rahman, learned counsel appearing for the respondent submitted in this regard that the Court learned Civil Judge (Jr. Div. No.1) had rightly passed the order dated 24.01.2025 and from the order itself, it reveals that inspite of presence of the DW, the petitioner/defendant remained absent without any step and at about 1:30 p.m. only, the petition was filed on behalf of the defendant, mentioning that the petitioner/defendant No.2 is undergoing treatment at GMCH and his engaged counsel is also suffering from illness for which, he could not appear before the Court, but the petition was not supported by any medical documents to substantiate the fact that the petitioner/defendant No.2 was suffering from any injury or was under treatment.

11. He further submitted that the petitioner also filed a review petition, being aggrieved with the order dated 24.01.2025, wherein, all the materials are considered and the medical ground of the petitioner was also considered and accordingly, it was observed that the only fact of treatment does not justify review of the order and the petitioner has failed to show any ground of non-production of the medical documents at the time of passing the order by the learned Civil Judge (Jr. Div. No.1) Darrang, Mangaldoi on 24.01.2025.

12. He further submitted that petitioner filed one after another petition with a view to delay the entire proceeding and after rejection of their prayer by the learned Civil Judge (Jr. Div. No.1) dated 10.06.2025, the arguments have already been heard and at present the matter is fixed for judgment.

13. Mr. Rahman, learned counsel accordingly raised vehement objection and submitted that it is not at all a fit case to consider the present petition filed by the petitioner/defendant No.2 and all the ground have taken into consideration while passing the order in the review petition and the learned Trial Court also rightly passed the order rejecting their prayer for adducing evidence vide its order dated 10.06.2025.

14. Heard the submissions of the learned counsel for the parties and I have also perused the annexures appended with the petition and the orders passed by the learned Civil Judge (Jr. Div. No.1) Darrang, Mangaldoi.

15. From the order passed by the learned Civil Judge (Jr. Div. No.1) dated 24.01.2025 in T.S. No. 162/2013, it reveals that the present petitioner/defendant earlier took all the steps for adducing evidence of official witness as DW and on the relevant day, the official witness was also present before the Court. But, he could not be examined due to absence of the counsel for the petitioner/defendant No.2 as well as the defendant himself.

16. From the order, it also reveals that on the relevant day, one application was also filed by Sub-Registrar, Dalgaoon stating that the Volume in respect of Deed No.3781/3851 dated 19.12.1982 and Volume No.12/1982 had already been deposited in the Sadar Sub Registrar Office, Tezpur. Thus, from the order itself, it is evident that the petitioner/defendant took all necessary steps for calling the Register Volume in respect of the Deeds and also took all necessary steps for adducing evidence of the official witness as DW. It also reveals that though the defendant remained absent, at about 1:30 p.m. a petition was filed by the defendant's side stating that the petitioner/defendant No.2 is undergoing treatment at GMCH and his engaged counsel was also suffering from illness. But, the only ground for rejection of the said petition for adjournment was that

it was not supported by any medical documents.

17. Further, from the submissions made by the learned counsel for the petitioner and from the petition itself, it is seen that he was undergoing treatment for his head injury which was allegedly caused by the plaintiff side/respondent and for which one case was also lodged which is accordingly registered and was under investigation. Thus, the ground for his treatment or the medical ground which was taken on 24.01.2025 cannot be out-rightly be rejected. However, it is a fact that on the relevant day, they could not produce any medical documents at the time of praying for adjournment. But, from the order passed by the learned Civil Judge (Jr. Div. No.1) it is seen that while passing the order under the review petition, it has discussed about the medical grounds, however, it was considered by the learned Trial Court that there is no new facts introduced in the said petition and the medical ground was also taken earlier at the time of rejecting the prayer for adjournment vide its order dated 24.01.2025 and it is also considered by the learned Trial Court that the medical documents which was subsequently furnished before the Court, could have very well be filed along with the petition filed on 24.01.2025 as a supporting medical documents and the only ground for his medical treatment does not justify the order of review and with this observation the learned Civil Judge (Jr. Div. No.1) had rejected the prayer for review, wherein the medical documents were subsequently produced by the present petitioner/defendant No.2.

18. Thus, it is seen that on the subsequent day, i.e., at the time of filing the review petition, the petitioner/defendant No.2 filed the medical documents which was not supported at the time of filing his earlier adjournment petition by his wife on the relevant day of passing the order dated 24.01.2025 when he was under the medical treatment.

19. However, from the order passed by the learned Trial Court, it reveals that the petitioner was discharged from hospital on 11.11.2024 which otherwise reveals that on 24.01.2025, the medical documents ought to have been procured by the petitioner/defendant No.2 while praying for adjournments. However, in this context it is submitted by Mr. Ali that though he was discharged from the medical, but he was undergoing treatment and being a layman and in absence of proper advice of his counsel, the defendant No.1/wife of the petitioner could not produce the medical documents.

20. Thus from the above discussion, it is seen that it is not a case that the defendant did not take any steps for production of the DW on the date fixed i.e., on 24.01.2025, rather, it is seen that they have taken all steps and Volume Registers were also brought by the official witness who was suppose to be examine as DW-1. However, due to medical condition of the petitioner and due to illness of the counsel representing the petitioner, they could not attend the Court and hence, a petition was filed lately at about 1:30 p.m. However, at the time of filing the review petition, the medical documents were produced before the Court. In the same time, it also cannot be denied that the defendants had a claim over the suit land and to substantiate their plea, it may be necessary for the defendant/petitioner to examine the official witness/Circle Officer.

21. So, considering all these aspects of the case and for the substantial justice, this Court is of the opinion that one opportunity may be given to the petitioner/defendant No.2 to adduce the official witness as DW along with all official records.

22. In view of the above, the present petition is allowed with a direction to the petitioner/defendant No.2 for production of the official witness on the date to be fixed by the Court learned Civil Judge (Jr. Div. No.1) Darrang, Mangaldoi and on

hearing the arguments from both the sides, the matter may be disposed of accordingly.

23. With the above observation and direction, this petition stands disposed of.

JUDGE

Comparing Assistant